

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Criminal No. 05-CR-10175-WGY-1
)
 v.)
)
NADINE J. GRIFFIN,)
)
 Defendant.)

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE THE ADMISSION OF FORMS 4340 AND TO DISMISS FOR
VIOLATION OF 26 U.S.C. § 7214(a)(1)(2) & (7)

The United States, by and through its undersigned attorney, hereby files its Response to Defendant's Motion in Limine to Exclude the Admission of Forms 4340 and to Dismiss for Violation of 26 U.S.C. § 7214(a)(1)(2) & (7). The government respectfully requests that defendant's motion be denied.

As noted in a previous government motion, the government provided defendant with copies of Certificate of Assessments and Payments (Forms 4340) for the years 1997 through 1999 as part of its automatic discovery (Bate Numbers US3387 to US3397). The Forms 4340 show defendant's tax filing history for these years, including when defendant filed her returns, the amount of reported adjusted gross income, taxes owed, and any tax payments. The Forms 4340 also show that various IRS notices were issued to defendant during these years informing her that income taxes were

still owed for income she *reported* on the tax returns for 1998 and 1999.

Defendant's alleges that the IRS did not make an assessment, and that the government failed to provide a Form 23-C. Defendant's allegations lack merit. First, as referenced in numerous government pleadings, as well as the indictment, defendant is charged with filing false U.S. individual income tax returns for the years 1998 and 1999, in that defendant failed to report and omitted substantial amounts of gross receipts from these returns. Thus, whether an assessment was made is not really at issue. Nonetheless, the Forms 4340 show that assessments were made by the IRS regarding the income defendant did report.

Second, the First Circuit has found that "Certificates of Assessments and Payments are 'routinely used to prove that tax assessment has in fact been made.'" Geiselman v. United States, 961 F.2d 1 (1st Cir. 1992) (stating that "Certificates of Assessments and Payments, which listed 'First Notice' dates for each assessment, also constituted presumptive proof that the IRS gave notice of the assessments and made demands for payment.")). Accordingly, defendant's request to exclude the Forms 4340 should be denied.

Also, contrary to defendant's assertion, the Forms 4340 (Certificate of Assessments and Payments) are admissible under

the Federal Rules of Evidence. See Fed. R. Evid. 902(4) & (1); United States v. Neff, 615 F.2d 1235, 1241 (9th Cir. 1980) (discussing IRS Certificate of Assessments and Payments that showed no filing was made and preserved by the IRS, "a public office or agency," and evidence in the form of a certification in accordance with 902(4) and (1)).

Finally, defendant has not presented any evidence to support the claim that the government has violated 26 U.S.C. § 7214. Accordingly, the defendant's request for a hearing should be denied.

WHEREFORE, the government respectfully requests that defendant's motion be denied.

Dated: July 6, 2006

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:

/s/ Christopher J. Maietta
CHRISTOPHER J. MAIETTA
Trial Attorney
U.S. Department of Justice

/s/ John N. Kane
JOHN N. KANE
Trial Attorney
U.S. Department of Justice

CERTIFICATE OF SERVICE

This is to certify that I have this day, July _____, 2006, served upon the person listed below a copy of the foregoing document by mail:

Alan S. Richey, Esq.
P.O. Box 1505
Port Hadlock, Washington 98339

Christopher J. Maietta